IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No.537 of 2001

1. The Commissioner of Income Tax
   Dehradun
2. Income Tax Officer Spl. Ward
   Dehradun ... Appellants

Versus

Reading & Bates Exploration Co.
As agent of Mr. M. Smart
C/o Arthur Anderson & Co.
426, World Trade Centre
Barakhamba Lane, New Delhi ... Respondent

Mr. S.K. Posti, Advocate for the appellants.

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

JUDGMENT

1. This appeal is filed against the order dated 28.02.2001 passed by the Income Tax Appellate Tribunal, Delhi Bench 'E', Delhi in I.T.A. No. 1719/Del/1995. The dispute relates to the Assessment Year 1992-93. The assessee is Mr. M. Smart, represented by Reading & Bates Exploration Co.

2. The learned counsel for the parties agree that the following only three questions of law arise in this appeal for consideration:-

> (i) "Whether on the facts and circumstances of the case, the ITAT was right in holding that 'Off Period Salary' was not taxable under section 9(1)(ii) read with the Explanation as it stood at the relevant time?"
> (ii) "Whether on the facts and in the circumstances of the case, the ITAT was legally correct in holding that "Free Boarding Facility" provided by the employer on the board the rig in high seas cannot be construed to be perquisite?"
> (iii) "Whether on the facts and in the circumstances of the case, the ITAT was legally justified in directing the AO to charge interest u/s 234-B which also stands amended by the Finance Act, 2001 with retrospective effect from 1.4.1989?"

3. So far as the question No.1 is concerned, this question has been decided by the Hon'ble Supreme Court in **Sedco Forex International Drill Inc. & others Vs. Commissioner of Income Tax, Dehradun and another reported in J.T. 2005(9) S.C. p/639.** In view of this decision, this question is answered in favour of the assessee.

4. In **Commissioner of Income Tax and another Vs. SEDCO Forex International Drilling Co. Ltd. and connected cases reported in (2003) 264 ITR 320,** a Division Bench of this Court held that the free boarding facility provided by the employer on the rig was not a perquisite under section 17(2)(iii) and that its value cannot be added to the income of the assessee. It has been further held that the imposition of interest under section 234-B was not justified without hearing and without reasons.

5 In view of the above, we dispose of the appeal accordingly.

(J.C.S. Rawat, J.) **(P.C. Verma, J)**

Dated 16.12.2005
LSR